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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[189D0102DRDS5A300000DR.5A311.IA000118]

RIN 1076-AF38

Tribal Transportation Program; Delay of Compliance Date

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; confirmation.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published on October 31, 2017, that delayed the deadline for Tribes to comply with Tribal Transportation Program requirements to collect data on proposed roads for the National Tribal Transportation Facility Inventory (NTTFI).

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, Division of Transportation, Office of Indian Services, Bureau of Indian Affairs, (202) 513-7711, leroy.gishi@bia.gov.

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I. Summary of Rule

Regulations governing the Tribal Transportation Program published in 2016. *See* 81 FR 78456 (November 7, 2016). The regulations became effective on December 7, 2016, except for § 170.443, which required Tribes' compliance one year later: on November 7, 2017. Section 170.443 required Tribes to collect data for proposed roads to be added to, or remain in, the NTTFI.

On October 31, 2017, BIA published an interim final rule delaying the November 7, 2017, deadline for compliance with § 170.443 to November 7, 2019. *See* 82 FR 50312. The delay provides BIA with time to reexamine the need for this data collected in the NTTFI and consult with Tribes on whether revision or deletion of the data collection requirements in § 170.443 is appropriate. BIA received 38 comments in the Federal e-rulemaking docket for this rule, none of which were relevant. The final rule being published today therefore confirms the interim final rule and the delay of the compliance date to November 7, 2019.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because Tribes are not small entities under the Regulatory Flexibility Act.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more because this rule affects only surface transportation for Tribes.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because it does not affect costs or prices.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with

foreign-based enterprises because the rule addresses Tribal surface transportation within the United States.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12360. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a summary impact statement, because the rule primarily addresses the relationship between the Federal Government and Tribes. A Federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government regulations with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will relieve a regulatory burden from Tribes and allow time for consultation on an appropriate replacement or deletion of regulatory requirements.

I. Paperwork Reduction Act

This rule contains information collection requirements, and the Office of Management and Budget (OMB) has approved the information collections under the Paperwork Reduction Act (PRA) under OMB Control Number 1076-0161, which expires December 31, 2019. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 ("NEPA", 42 U.S.C. 4321 et seq.) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information, see 43 CFR 46.210(i)) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in E.O. 13211.

A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians-lands.

For the reasons stated in the preamble, the interim final rule amending 25 CFR part

170 which was published at 82 FR 50312 on October 31, 2017, is adopted as final without change.

Dated: January 26, 2018.

John Tahsuda,

*Principal Deputy Assistant Secretary – Indian Affairs,
exercising the authority of the Assistant Secretary – Indian Affairs.*

[FR Doc. 2018-04103 Filed: 2/27/2018 8:45 am; Publication Date: 2/28/2018]